

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC: [REDACTED]:1:GL-125995-00  
[REDACTED]

date: August 2, 2001

to: Innocent Spouse Unit  
Attn. Connie Hemingway

from: [REDACTED]  
Attorney (SBSE)

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subject: Review of [REDACTED] Innocent Spouse Cases

This is in response to your request for our views concerning the proposed denial of the innocent spouse claim of [REDACTED]. We had requested that you forward to us the first case where you are proposing to deny the claim. We contemplated using this claim as an example for your use in reviewing other cases involving [REDACTED] investors who claim innocent spouse status.

However, while reviewing the proposed disallowance letter on [REDACTED], it came to our attention that the [REDACTED] examination team had not yet sent you the documents relating to the 70 or so innocent spouse claims. We requested that the examination team make an extra set of the those documents and forward them to us. We have reviewed those documents. In order to assist you in your review, we have prepared a brief memorandum for each innocent spouse claimant explaining the documents that were supplied by the examination team.

From the materials that you have forwarded to us, I presume that your proposed denial letter will look substantially like the following:

## LETTERHEAD

ADDRESS ETC.

Dear Taxpayer or attorney

- (1). We have made the following determinations regarding the innocent spouse claim you filed for the tax years shown above.<sup>1</sup>
- (2). You are not entitled to relief of liability for the understatement of tax as an innocent spouse under Internal Revenue Code Section 6015(b).
- (3). You are not entitled to elect to allocate a deficiency under Internal Revenue Code Section 6015(c).
- (4). You are not entitled to equitable relief of liability for the understatement of tax under Internal Revenue Code Section 6015(f).
- (5). We did not grant relief because information contained in your case indicates that you had knowledge and a reason to know of the items that gave rise to the tax deficiency. You did not satisfy your duty of inquiry at the time of the preparation of the return to determine if it was correct. You did not establish an economic hardship as described in Regulations on Procedure and Administration 301.6343-1(b)(4). Therefore relief is being denied under 6015(b) (c) and (f).
- (6). You signed the partnership agreement with [REDACTED] therefore you had knowledge of the items that gave rise to the deficiency. You are listed on the K-1 as a partner in at least one of the partnerships that was adjusted. The partnerships that were adjusted are similar in nature.

## THE FORM LETTER WOULD THEN GO ON TO EXPLAIN THE TAXPAYER'S APPEAL RIGHTS

The first four paragraphs of the letter are part of the form letter apparently prepared at the National Level. The fifth and sixth paragraphs explains the reasons for the denial and is crafted to fit the particular case. As stated above, we have prepared a memorandum for each innocent spouse showing which documents we have reviewed. In addition, we have prepared proposed disallowance language for your use, should you decide that some or all of the claims should be disallowed. We suggest that you utilize the proposed disallowance language, as it is tailored to this particular tax shelter. The proposed language

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<sup>1</sup>I noticed in the workpapers that you referred to only the years [REDACTED] through [REDACTED], but the claim lists years after [REDACTED], which had not been assessed. I presume that the disallowance letter will refer to all years for which the claim was made.

on the list would be used in lieu of your paragraphs five and six above.

The Courts have held that in those instances where a deduction is relatively large in comparison to the income reported, that circumstance puts the spouse on notice to inquire further into the legitimacy of the deduction. Price v. Commissioner, 887 F.2d 959, 965-66 (9<sup>th</sup> Cir. 1989); Levin v. Commissioner, T.C. Memo. 1987-67; Hayman v. Commissioner, 992 F.2d 1256 (2d Cir. 1993), aff'g T.C. Memo. 1992-228. Since we do not have the taxpayers' returns for each year we are not sure that reason for disallowance will apply to each taxpayer.

Further, we understand that most claims will list all the years that the purported innocent spouse would potentially be liable. For years after [REDACTED], the assessments have not been made. Most of the years after [REDACTED] are still pending in TEFRA proceedings in the Tax Court.<sup>2</sup> Since we do not have all the claims filed by the purported innocent spouse, we presume that you will review the claims and provide as appropriate the approved pre-mature request letter drafted for this project.

If you have any questions, please feel free to contact me at [REDACTED].

Christopher Sterner  
Area Counsel  
(Small Business/Self-Employed: [REDACTED])

By: [REDACTED]

Attorney (SBSE)

enclosures:

Proposed disallowance language  
Innocent spouse memorandum for each claimant

cc w/enclosures:

Dean Wakayama, Associate Area Counsel, Seattle

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<sup>2</sup>In some cases, the computational adjustments are beginning to be drafted by the Service Center as the result of the Tax Court case of [REDACTED]

## PROPOSED DISALLOWANCE LANGUAGE

The following statement should appear at the top of Form 886A:

"In making our determination, the following are some of the factors that we took into account and some of the conclusions that we reached regarding your claim."

When denying relief under I.R.C. § 6015(b), (c) or (f) choose from the following list of possible reasons for the disallowance. You should include all applicable reasons for the denial.

### Form 886A Checklist:

#### 1. Denials of relief under I.R.C. § 6015(b)

A. We have concluded that you had actual knowledge or reason to know of the item giving rise to the understatement. The following factors were considered in reaching this conclusion:

- 1) You signed one or more partnership/ subscription agreements/powers of attorney with respect to the [REDACTED] partnerships;
- 2) You signed personal checks made payable to [REDACTED] or other [REDACTED] entity;
- 3) You signed other correspondence/documents relating to the [REDACTED] partnerships.
- 4) The size of the loss/deduction in relation to the income reported on the return would reasonably put you on notice that further inquiry would need to be made.
- 5) You have not shown that you satisfied your duty of inquiry at the time the return was prepared and signed to make sure the return was correct;
- 6) Your investment in the [REDACTED] partnerships was a joint investment with your spouse giving you actual knowledge of the item giving rise to the deficiency;

B. You cannot claim relief under section 6015(b) with respect to your own erroneous items and you have not shown that the erroneous items are attributable to your spouse;

C. You have not shown that it would be inequitable, taking into account all of the facts and circumstances, to hold you liable for the deficiency attributable to the understatement.

2. Denials of relief under I.R.C. § 6015(c):

A. You do not meet the threshold marital status requirements to be eligible for relief under section 6015(c).

B. We have concluded that you had actual knowledge of the item giving rise to the understatement. The following factors were considered in reaching this conclusion:

1) You signed one or more partnership/subscription agreements/powers of attorney with respect to the [REDACTED] partnerships;

2) You signed personal checks made payable to [REDACTED] or other [REDACTED] entity;

3) You signed other correspondence/documents relating to the [REDACTED] partnerships.

4) You are not eligible for relief under section 6015(c) with respect to your own erroneous items and you have not shown that the erroneous items are attributable to your spouse;

3. Denials of relief under I.R.C. § 6015(f):

You have not shown that it would be inequitable, taking into account all of the facts and circumstances, to hold you liable for the deficiency attributable to the understatement.